

MARN & ASSOCIATES
REGISTERED PATENT ATTORNEYS
136 DRUM POINT ROAD, SUITE 7A
BRICK, NEW JERSEY 08723
TELEPHONE (732) 262-2075
FAX (732) 262-2081

LOUIS E. MARN

CLIFFORD G. FRAYNE
of counsel

May 13, 2002

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Att: Board of Patent Appeals and Interferences

RE: Serial No. 09/577,854 "Reflective Warning and Locator
Collar for Hydrants, Pylons and Support Posts"
Our Reference P/4593

Sir:

Enclosed please find an original and two copies of an Appeal Brief in the above identified matter based on the Notice of Appeal filed March 14, 2002. This Appeal is from the Office Action (final) dated December 21, 2001.

A check in the amount of \$160.00 is enclosed.

Sincerely,

MARN & ASSOCIATES


CLIFFORD G. FRAYNE

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT : ALBERT A. BURLANDO
SERIAL NUMBER : 09/577,854
FILED : JUNE 15, 2000
FOR : REFLECTIVE WARNING AND LOCATOR COLLAR
FOR HYDRANTS, PYLONS AND SUPPORT POSTS
ART UNIT : 2859
EXAMINER : R. SMITH

APPEAL BRIEF

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TO: ASSISTANT COMMISSIONER OF
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ATT: BOARD OF APPEALS

SIR:

I hereby certify that this paper or fee is being deposited with the U.S. Postal Service "Express Mail Post office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner of Patents, Washington, DC 20231.

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This is an appeal from the Office Action (final) dated December 21, 2001.

REAL PARTY IN INTEREST

Albert A. Burlando, the named inventor, is the real party in interest.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF ALL CLAIMS

Claims 1 through 8 were initially filed and pending in the application. Claims 4 and 5 were canceled without prejudice. Claims 1-3 and 6-8 stand rejected and are the appeal claims.

STATUS OF ALL AMENDMENTS FILED SUBSEQUENT TO FINAL REJECTION

A Rule 116 Amendment was filed subsequent to the final rejection addressing the 35 U.S.C. §112 rejection, but was not entered.

SUMMARY OF THE INVENTION

Appellant's invention relates to a reflective warning and locating collar for fire hydrants, pylons and support posts to improve their visibility and identity, the collar having a support member defined by a flexibly extruded web having flanges along the longitudinal edges to define a channel slot (Fig. 1; Ref. #12; Page 5, Lines 12-17) for receipt of an elongate flexible reflective member (Fig. 1; Ref. #28; Page 5; Lines 18-20) in web form slidably receivable within the channel, the ends of the reflective member and support member having a plurality of alignable apertures for receipt of a fastening means (Fig. 1; Ref.

#32; Page 6, Lines 4-8).

STATEMENT OF ALL ISSUES PRESENTED FOR REVIEW

1. Does the Hughes reference in view of the Mohs reference obviate Claims 1-3 of the 35 U.S.C. §103(a).
2. Does the Blackman reference in view of the Hughes reference and the Mohs reference obviate Claims 6-8 under 35 U.S.C. §103(a).

GROUPING OF CLAIMS FOR EACH GROUND OF REJECTION

Claims 1-3 are directed to the collar apparatus alone; independent Claim 6 and dependable Claims 7-9 are directed to the combination of hydrant and collar.

CLAIMS ON APPEAL

Claims 1-3 and 6-8 are set forth in the attached Appendix. The following Claim 1 is the independent claim on appeal directed to the collar apparatus alone:

1. A reflective warning and locating collar for fire hydrants, pylons or support posts, said reflective warning and locating collar comprising:

a support member having an elongated, flexible, extruded web having a first side and a second side, defined by two parallel longitudinal edges, and a first and second end, said web having

flanges depending from said longitudinal edges of said first side of said web, said flanges terminating with inwardly turned second flanges parallel to said web thereby defining a channel between said web and said inwardly turned second flanges from said first end of said support member to said second end of said support member;

a reflective member comprised of an elongate flexible web slidably receivable and retainable within said channel, said support member and said reflective member having a plurality of alignable apertures proximate their said ends for alignment and receipt of a fastening means so as to forbid said support member and said reflective member to be circumscribably engaged about a fire hydrant, pylon or support post forming a reflective warning and locating collar.

APPELLANT'S ARGUMENT

A. OBVIOUSNESS UNDER 35 U.S.C. §103

In *Graham v. John Deere Co., Inc.* 381 U.S. 1(1966), the Supreme Court established at least three (3) criteria to be evaluated before reaching a *prima facie* conclusion of obviousness under 35. U.S.C. §103(a). The criterion involved of fact determination of (1) scope and content of the prior art; (2) the

difference between the prior art and the claimed invention; and (3) level of ordinary skill in the pertinent art. The first criterion is a two-fold consideration: scope of the prior art and content of the prior art. Scope of the prior art has been defined as that reasonably pertinent to the particular problem which the inventor was involved.

Appellant was addressing the problem of developing a reflective warning and locator member of fire hydrants so that they could be more easily spotted or identified at night or in conditions of low visibility by firemen. The device was inexpensive and easily secured about the fire hydrant and could even be color coated with different reflective members to indicate to responding firemen whether or not the particular hydrant was active or inactive, thus avoiding lost time in responding to a fire or other distress call requiring the use of fire hoses. The reflective warning and locator collar would have further application on pylons such as docks warning boaters of their presence at night or in low visibility conditions. The reflective warning and locating collar could have further application to pylons or poles positioned adjacent roads or highways so as to warn drivers of their presence. The next criteria in Graham v.

John Deere Supra is the difference between the prior art and the claimed invention.

The primary reference cited against Appellant is that of Hughes. Hughes discloses reflective bands for use with highway barricade barrels. Hughes does not disclose a channel, but rather a reflective tape which is adhesed to a plastic band. Hughes utilizes a plurality of such bands on a per barrel basis. Mohs teaches a reflective seal trim strip for providing a long and narrow reflector (Column 1, Line 49). Appellant respectfully submits that the combination of Hughes and Mohs neither teaches nor suggests a collar having a support member defining a channel for the slidabile receipt of a reflective member. Each collar can be juxtaposed about the neck of a fire hydrant and therefore fail to obviate Appellant's invention within the criteria of Graham v. John Deere.

Claims 6-8 stand rejected under 35 U.S.C. §103 based on Hughes and Mohs in further combination with Blackman. Blackman discloses a fire hydrant reflector in two patents, the '565 patent and the '567 patent. The '565 patent calls for a band to be bolted to the widest circumferences of the cap of the hydrant. The band having positioned or formed therein a plurality of

distinct, separate, prismatic glass reflectors. The '567 patent to Blackman requires a band to be positioned about the hydrant beneath the cap of the hydrant, but above the hose connections, and comprises a metal band having distinct and separate reflector units. While Blackman addresses the same problem as Appellant, Blackman utilizes separate and distinct reflector units on a metal band which is cooperatively fastened to the hydrant. Appellant's invention consists of a flexible base member and flexible reflective member which encircles the hydrant below the cap and contains a continuous reflector as opposed to the separate and distinct reflectors as taught by Blackman. The teachings of Blackman are of a permanent nature, whereas Appellant's teachings, while of a permanent nature, permit the quick change from color to another color in an instance where it is necessary to indicate that a particular fire hydrant is not available to supply water.

Appellant respectfully submits that to combine the highway barrel art of Hughes and the reflector trim of Mohs, with Blackman's attempt to improve the visibility of hydrants by circumferential bands physically secured to the hydrant, stretches the tenets of Graham v. John Deere.

In the context of the last observations in Graham v. John Deere, Inc. Supra, i.e. the level of ordinary skill in the pertinent art, it is respectfully submitted that one of ordinary skill in the art when studying the Hughes reference in combination with Mohs would not be led to the protective reflective warning and locating collar of Appellant. It is therefore respectfully submitted that the combination of Hughes and Mohs are insufficient within the context of Graham v. John Deere, Inc. Supra to render independent Claim 1 and depending Claims 2 and 3 obvious under 35 U.S.C. §013(a) and it is further respectfully submitted that the combination of Hughes, Mohs and Blackman are insufficient within the context to render independent Claim 6 and depending Claims 7 and 8 obvious under 35 U.S.C. §103(a).

CONCLUSION

Claims 1-3 and 6-8 have been improperly rejected under 35 U.S.C. §103. Appellant respectfully requests that this Honorable Board of Appeals reverse the Examiner's rejection of Claims 1-3 and 6-8 over the cited references.

A check in the amount of \$160.00 in payment of the appeal fee
is enclosed herewith.

Respectfully submitted,

ALBERT A. BURLANDO - Appellant

By:



CLIFFORD G. FRAYNE #27,637

MARN & ASSOCIATES

489 Aurora Place

Brick, NJ 08723

(732) 262-2075

APPENDIX

1. A reflective warning and locating collar for fire hydrants, pylons or support posts, said reflective warning and locating collar comprising:

a support member having an elongated, flexible, extruded web having a first side and a second side, defined by two parallel longitudinal edges and a first end and a second end, said web having flanges depending from said longitudinal edges of said first side of said web, said flanges terminating with inwardly turned second flanges parallel to said web thereby defining a channel between said web and said inwardly turned second flanges from said first end of said support member to said second end of said support member;

a reflective member comprised of an elongate flexible web slidably receivable and retainable within said channel, said support member and said reflective member having a plurality of alignable apertures proximate their said ends for alignment and receipt of a fastening means so as to permit said support member and said reflective member to be circumscribably engaged about a fire hydrant, pylon or support post forming a reflective warning

and locating collar.

2. The reflective warning and locating collar in accordance with Claim 1 wherein said support member is fabricated from a weather resistant polymer.

3. The reflective warning and locating collar in accordance with Claim 1 wherein said reflective member is bonded to a substrate, said substrate and said reflective member slidably receivable within said channel of said support member.

6. A fire hydrant having an identifiability member comprising:

a fire hydrant having a generally vertically tubular member extending upwardly from the ground and in communication with a source of water, a plurality of hose connections extending perpendicularly outwardly from said tubular vertical member, said hose connections having cap members affixed thereto and said tubular vertical member having a cap member affixed to a top end, said cap member incorporating a valve actuator, said identifiability member comprising a reflective warning and locating collar circumscribably engaged about said fire hydrant said reflective warning and locating collar comprising a support member having an elongated, flexible extruded web having a first

side and a second side, defined by two parallel longitudinal edges and a first end and a second end, said web having flanges depending from said longitudinal edges of said first side of said web, said flanges terminating with inwardly turned second flanges parallel to said web thereby defining a channel between said web and said inwardly turned second flanges from said first end of said support member to said second end of said support member, a reflective member comprised of an elongate flexible web slidably receivable and retainable within said channel, said support member and said reflective member having a plurality of alignable apertures proximate their said ends for alignment and receipt of a fastening means so as to permit said support member and said reflective member to be circumscribably engaged about said fire hydrant.

7. The fire hydrant in accordance with Claim 6 wherein said reflective warning and locating collar support member is fabricated from a weather resistant polymer.

8. The fire hydrant in accordance with Claim 6 wherein a second reflective warning and locating collar is positioned about said fire hydrant beneath said extending hose connections.